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 14 COUNTERCLAIMANTS SKC KOLON
 PI, INC. and SKC, INC.
 15

16 **UNITED STATES DISTRICT COURT**
 17 **CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**
 18

19 KANEKA CORPORATION,
 20 Plaintiff,
 21 v.
 22 SKC KOLON PI, INC.; and SKC, INC.,
 23 Defendants.

Case No. 2:11-CV-03397-JGB-RZ
**DEFENDANTS AND
 COUNTERCLAIMANTS'
 REPLY IN SUPPORT OF
 MOT. TO STAY EXECUTION OF
 JUDGMENT PENDING
 DISPOSITION OF POST-TRIAL**

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SKC KOLON PI, INC.; and SKC, INC.,

Counterclaimants,

v.

KANEKA CORPORATION,

Counterdefendant.

MOTIONS UNDER RULE 62(B)

Judge: Hon. Jesus G. Bernal
Place: Courtroom 1
3470 Twelfth Street
Riverside, CA 92501

Date: July 10, 2017
Time: 9:00 am

Trial: November 3, 2015
Judgment: May 25, 2017

1 Regardless of how many arguments or cases the parties cite, the issue
2 presented here reduces simply to whether this Court, in the exercise of its discretion,
3 should require that SKPI post a bond during the stay of execution of the monetary
4 judgment, while the Court decides the post-trial motions that SKPI filed on June 22,
5 2017. Kaneka does not oppose the stay SKPI seeks; it just wants SKPI to spend
6 money to post a bond immediately. The issue thus is not whether a stay should be
7 granted, but whether a bond should be imposed during that stay and how much that
8 bond should be.

9 In its enthusiasm to impose additional costs on SKPI, Kaneka proposes that
10 the Court apply a four-prong test that most courts apply only when determining
11 whether to stay execution of a judgment pending appeal, usually including
12 injunctive relief—as opposed to the test courts apply when the only issue is whether
13 a bond should be included with a stay, that otherwise is uncontested. Ignoring the
14 on-point precedent, test, and analysis SKPI identifies and addresses in its motion,
15 Kaneka presents a different and inapplicable four-prong test and argues it should
16 prevail, because SKPI did not address the factors under the four-prong test Kaneka
17 presents. But SKPI did not address those factors because they do not apply to the
18 issue presented by its motion; and Kaneka declined to address, let alone rebut,
19 SKPI’s proofs under the proper test.

20 This case is part of a war for worldwide market share, where the ability to pay
21 has never been the issue. Kaneka cannot dispute that both parties are large,
22 worldwide competitors with assets necessary to pursue their rights in court and, at
23 the end, pay a finally adjudicated judgment, whenever all appeals are completed.
24 Kaneka does not respond to the proofs of SKPI’s ability to pay, because it cannot.
25 Given the controlling law and the unrebutted proofs, SKPI has shown that the Court
26 under Rule 62(b) can and should grant a stay without bond, pending disposition of
27 post-trial motions. That is all that SKPI seeks in its motion before the Court.
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1 However, should the Court in its discretion conclude that some bond should be
2 posted, SKPI asks that the Court determine the amount of bond and give SKPI a
3 reasonable time to obtain and enter the bond as part of the uncontested stay.

4 **I. Because Kaneka does not oppose a stay of execution of the judgment, the**
5 **only issue before the Court is whether to impose a bond during the stay**

6 The very first paragraph of Kaneka's opposition solidifies that the only issue
7 before the Court is whether or not a bond should be imposed pending the stay of
8 execution of the judgment. As Kaneka expressly stated during its meet and confer
9 with SKPI and again reiterates in its opposition, "Kaneka is *not* opposed to a stay of
10 enforcement generally. . . ." Dkt. No. 747 at 5 (emphasis added). Instead, Kaneka is
11 only "strongly opposed to a stay without proper security as required under Rule
12 62(b)." *Id.* Despite the remainder of Kaneka's opposition seeking to apply to a
13 four-factor test that courts consider when determining whether or not to grant a stay,
14 here, entry of a stay is not in dispute. Moreover, the four-factor test Kaneka relies on
15 is often applied in the context of a stay pending appeal or involving injunctive relief,
16 neither of which is at issue here. Kaneka having failed to address the applicable
17 standard relevant to the sole issue before the Court or meaningfully rebut SKPI's
18 proofs, SKPI respectfully submits that its motion should be granted.

19 **A. Under the applicable law, this Court in its discretion can and**
20 **should grant the uncontested stay, without entry of a bond**

21 When addressing a motion for an unsecured stay, courts consider (1) whether
22 a "defendant's ability to pay is so plain that the cost of the bond would be a waste of
23 money" and (2) whether "the requirement would put the defendant's other creditors
24 in undue jeopardy." *Quinones v. Chase Bank USA, N.A.*, No. 09cv2748-AJB (BGS),
25 2012 WL 1530155, *2 (S.D. Ca. May 1, 2012). SKPI addressed these factors in its
26 opening brief and presented evidence to support its ability to pay the cost of a bond.
27 Kaneka, on the other hand, fails to squarely address them.

1 Kaneka presents no proof that SKPI is unable to pay the bond, leaving SKPI's
2 proofs unrebutted. After years of litigation without ever seeking any form of
3 security, Kaneka, through attorney argument and nothing more, speculates that it
4 might have some unsubstantiated difficulty collecting a judgment, if it prevails after
5 post-trial motions and an appeal. For example, Kaneka asserts that SKPI does not
6 show "what the assets are, where they are located, and whether Kaneka, as a
7 judgment creditor, could have priority over the other creditors of SKPI." Dkt. No.
8 747 at 9. The law does not require such proofs, particularly in response to
9 speculation. Moreover, the evidence SKPI provided in support of its motion shows
10 that SKPI has sufficient assets to pay a bond (close to 20 times the amount of the
11 monetary judgment award) and has the ability to pay the bond in this district.
12 Dkt. No. 743-4 and -5. And, a relevant factor courts consider in determining
13 whether to waive bond is whether imposing a bond "would put the defendant's
14 *other* creditors in undue jeopardy." *Quinones*, 2012 WL 1530155, *2 (emphasis
15 added). If, as here, entry of a bond is unnecessary to preserve a potential final award
16 to a party and is a waste of money, and in essence a punishment, courts can and do
17 decline to require such a bond.

18 Kaneka also contends that SKPI's foreign status is a factor that weighs
19 against granting SKPI's motion. Dkt. No. 747 at 10. Again, that is based on
20 unsubstantiated speculation, with no relevant proofs regarding SKPI, which is a
21 recognized leader in the industry, with substantial assets and international business
22 and goodwill. The *Grand Ent. Group, Ltd. v. Star Media Sales, Inc.*, No. 86-5763,
23 1992 WL 114953 (E.D. Pa. 1992), case Kaneka cites for this proposition bears no
24 relevant analogies to this case. In that case, the defendants continuously refused "to
25 accept this court's jurisdiction over them," leaving the court to question whether
26 they would ever meet their obligations. *Id.* at *2. The court in *Grand Ent. Group,*
27 *Ltd.* further noted that the defendants did not "appear to have assets in this country
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1 that could be used to satisfy the judgment against them,” further supporting the
2 court’s concern. *Id.* SKPI has accepted jurisdiction in this Court here and in the
3 pending declaratory judgment action. SKPI has shown it has significant assets and
4 the ability to pay. The mere fact that SKPI, like Kaneka, is a foreign company does
5 not establish or support the conclusion that a bond should be required.

6 Under the proven facts of record, SKPI submits that the imposition of bond is
7 unnecessary and would be a waste of money and resources. *See Mendez v. Baca*,
8 No. 11-04771-MWF (PJWx), 2013 WL 12162127, at *1 (C.D. Ca. Sep. 16, 2013);
9 *Quinones*, 2012 WL 1530155. It therefore requests that the Court enter an
10 uncontested stay, without a bond.

11 **B. The tests and analysis Kaneka presents in its motion are neither**
12 **relevant nor supportive of the undefined bond it seeks**

13 The four-prong test and analysis Kaneka presents in its opposition leads the
14 Court away from the limited issue before it, and the law that applies. The four-prong
15 test does not guide the inquiry here regarding whether a bond should be imposed
16 during an otherwise uncontested stay and, if so, how much such a bond should be.
17 Instead, the four-prong test and the headings in Kaneka’s opposition relate to
18 whether a stay should be entered at all, when the requested stay is opposed and
19 sought at stages of a case different than those before this Court. This four-prong test
20 applies when determining whether to grant stay, and most courts apply it in the
21 context of a stay pending appeal or involving injunctive relief. *See generally, Bolt v.*
22 *Merrimack Pharms., Inc.*, No. S-04-0893 WBS DAD, 2005 WL 2298423, *2 (E.D.
23 Cal. Sept. 20, 2005) (explaining that “[t]he Federal Rules of Civil Procedure impose
24 distinct standards for stays of judgments involving injunctions, *see* Fed.R.Civ.P.
25 62(c), and stays of other judgments, *see* Fed.R.Civ.P. 62(d)” and that the “standard
26 for evaluating a motion to stay injunctive relief pending appeal” was “irrelevant” in
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1 the Rule 62(d) context). Neither is at issue here, and most importantly, as explained
2 in detail above, entry of a stay is not in dispute.

3 The cases Kaneka cites further show that the test it asks this Court to apply is
4 not relevant to the inquiry at issue. In *Grand Ent. Group, Ltd.*, the court “decline[d]
5 to accept defendants’ invitation to apply the four-factor test” and explained that
6 “[w]ith a single exception, every court that has applied the four-factor test in the
7 Rule 62 context has done so upon a motion to stay an injunction under Rule 62(c),
8 not a motion to stay a monetary judgment under Rule 62(d).” 1992 WL 114953, at
9 *1. Moreover, other cases Kaneka cites show that the courts normally do not apply
10 the four-prong test when determining whether to grant a stay of execution of a
11 judgment pending of post-trial motion. *See American Family Mut. Ins. Co. v. Miell*,
12 No. C04-0142, 2008 WL 746604 (N.D. Iowa Mar. 19, 2008) (granting a stay of
13 execution of a judgment pending disposition of post-trial motions); *In re Apollo*
14 *Group, Inc. Secs. Litig.*, No. 04-2204-PHX-JAT, 2008 WL 410625 (D. Ariz. Feb.
15 13, 2008 (same); *Int’l Wood Processors v. Power Dry, Inc.*, 102 F.R.D. 212 (D.S.C.
16 1984) (same). And Kaneka’s crop-quoting from the Supreme Court’s decision in
17 *Peacock v. Thomas*, 516 U.S. 349 (1996), in which the Court addressed and ruled
18 only on the question of whether the federal courts had jurisdiction over a given
19 action (which the Court held they did not) is of no relevance to the issues before this
20 Court or otherwise of an assistance to this Court. Indeed, neither the lower courts
21 nor the Supreme Court addressed or decided any disputed issues regarding stays or
22 bonds.

23 Regardless of how many cases Kaneka cites from how many different
24 jurisdictions, it cannot be disputed that this Court, under Rule 62(b), has discretion
25 to require, or not require, a bond, for an otherwise uncontested stay, without
26 addressing the all of the factors of the four-prong test Kaneka proposes. For
27 example, under Kaneka’s proposed likelihood of success prong alone, this Court
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1 would have to consider and weigh all of the issues raised by SKPI's post-trial
2 motions, before the Court could determine whether to require a bond during a stay
3 of execution of the judgment sought to apply over the period during which the Court
4 will consider and rule on those motions. That is not the law.

5 **C. If this Court imposes a bond pending the uncontested and limited**
6 **stay requested, SKPI submits that a modest bond is appropriate**

7 While SKPI respectfully submits that no bond is needed during the stay
8 requested by its motion, SKPI acknowledges that this Court within its discretion can
9 conclude otherwise. Should the Court determine that some bond is appropriate to
10 secure the potential future payment of a now undetermined final judgment, this
11 Court has discretion to decide how much the bond should be, in the circumstances
12 before it. Indeed, case law Kaneka cites shows that a court can require a bond that is
13 less than full amount of the judgment. *See In re Apollo Group, Inc. Secs. Litig.*,
14 2008 WL 410625 (staying execution and imposing a bond of 1/2 of the estimated
15 judgment, in part, because "the Court is confident that Defendant Apollo's financial
16 position adequately protects Lead Plaintiff's interest to the extent that security in the
17 amount of fifty percent of Defendants' estimated potential liability only partially
18 secures the judgment."); *see also American Family Mut. Ins. Co.*, 2008 WL 746604
19 (staying execution and imposing a bond of about 1/3 of the judgment in light of the
20 defendant's financial condition and other factors). Given SKPI's assets and ongoing
21 business success, the limited period of the stay SKPI seeks, and the speculative
22 nature of Kaneka's opposition, SKPI submits that any required bond should be
23 modest relative to the present judgment.

24 **II. Conclusion**

25 For the foregoing reasons, SKPI seeks the entry of the stay of execution of the
26 judgment without bond as set forth in this reply and SKPI's initial brief. In the
27 alternative, SKPI suggests that any required bond should be modest in value, given
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1 the circumstances before the Court. Finally, SKPI again suggests that this motion be
2 decided on the briefs before the Court, without a hearing.

3
4 DATED: June 26, 2017

Respectfully submitted,

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